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Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 225.

ISABELLA GONZALES, *Appellant,*

vs.

WILLIAM WILLIAMS, UNITED STATES COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK, *Appellee.*

Brief filed by leave of the Court by

FEDERICO DEGETAU,
Resident Commissioner from Porto Rico,
as Amicus Curiæ.

STATEMENT OF THE CASE.

This is an action instituted in the United States Circuit Court for the Southern District of New York, by Isabella Gonzalez, a citizen of Porto Rico, arriving at the port of New York from said Territory on August 24, 1902, who was detained at Ellis Island Immigrant Station, examined by a Board of Special Inquiry, and prevented from landing upon the ground that she was liable to become a public charge. Said citizen of Porto Rico sued out a writ of *habeas corpus* before the United States Circuit Court for the Southern District of New York. The writ was dismissed and an appeal was taken from said dismissal to this Honorable Court.

The action of the Immigration authorities of the port of New York was taken in compliance with the provisions of a circular issued by the Treasury Department, under date of August 2, 1902, advising that:

"The provisions of the laws regulating immigration including those which prescribe payment of the head tax, apply to the residents and natives of Porto Rico." * * *

Prior to the issue of that circular, Porto Rican laborers coming to work in tobacco factories of the mainland have landed in New York without being subjected to the restrictions of the immigration laws. The only case of which I have had any knowledge in which a Porto Rican was prevented from landing at said port, previously to the date of that circular, was that of Professor Gomez Stanley, who came from France and was temporarily detained at Ellis Island. To this I respectfully called the attention of the Executive Branch of the Government. The position

taken by the State Department at that time seemed to end satisfactorily this kind of difficulty. That Department in a communication dated February 16, 1901, referring to the statement of Mr. Gage, then Secretary of the Treasury, assured me that:

"The error of holding him, even temporarily evidently arose from the lack of knowledge of some officers as to the status of the Porto Ricans, there having been no judicial decision in the question."

But in view of the subsequent issuance of said circular I submitted on August 30th, of the same year, to the Hon. Secretary of State, and, by his suggestion, on October 5th, to the Hon. Secretary of the Treasury, a protest against said circular, because its provisions are in my opinion inconsistent with the Constitution of the United States and with the laws of Porto Rico, which, as Resident Commissioner elected by the qualified voters of said Territory, as provided for in Section 39, of the Act approved on April 12, 1900, before entering upon the duties of said office, I took an oath to support. This oath was taken in compliance with Section 16, of said Act which provides, that:

"All officials authorized by this Act shall, before entering upon the duties of their respective offices, take an oath to support the Constitution of the United States and the laws of Porto Rico."

The Treasury Department answered me under date of October 15, 1902, as follows:

"Without going into a discussion of the points raised by you in objection thereto, it seems sufficient to direct your attention to the judicial finding of Judge Lacombe of the United States Circuit Court for the Southern District of New York."

Acting upon the suggestion of the Treasury Department, I have carefully studied the decision of the learned judge, and found that his opinion according to my best knowledge, is in open opposition to the Constitution and the laws that I have sworn to support. Hence my motion to file this brief as *amicus curiæ* to this honorable Court.

BRIEF OF THE ARGUMENT.

First Point.

To state that a person is "a native of Porto Rico" in order to decide whether said person is a citizen of the United States, is inconsistent with Sec. 7 of the Act of April 12, 1900, that declares *all* inhabitants of the Island continuing to reside therein to be citizens of Porto Rico with the sole exception of those who elected to preserve their allegiance to the Crown of Spain.

Second Point.

In the enforcement of the immigration laws against a native of the territory of Porto Rico coming from any port of said territory to any port in the mainland, the proposition that, "the only question open for discussion * * * is whether said person is an alien," is inconsistent with the provision of the immigration laws enforced, which requires the passenger to whom they apply to be not a citizen of the United States *and to come from a foreign port.*

Third Point.

To quote the definition of citzenship in the Fourteenth Amendment to the Constitution omitting the phrase relating to State citizenship, is to deprive the Constitutional definition of one of its essential characteristics. The quotation

thus made is not only incomplete but also misleading in its bearing upon the case under consideration. The amendment quoted does not require the territory in which a person is born to be United States territory *at the time of his birth*. It is therefore inconsistent with the constitutional prescription to deny national citizenship to a person born in the United States, subject to its jurisdiction and declared to be a citizen of said United States territory on the ground that said territory was not United States territory at the time of his or her birth.

Fourth Point.

The syllogism that a person "was by birth an alien, and that unless she has been naturalized she is still an alien" as applied to the present case constitutes a case of *fallaciæ dictionis* on account of the unrestricted meaning of the verb *was* embracing two quite different legal questions. So far as this verb refers to the time since the territory of Porto Rico became a territory of the United States, the first premise is a *petitio principii* because what it assumes is identical with the conclusion to be proved. In such case the suggestion that said person can be naturalized under the laws prescribed by Congress regulating the admission of aliens to citizenship is juridically and legally inadmissible.

It is juridically inadmissible because to be naturalized means to become as a native of the territory of a given country through a legal formula, and the natives of a territory of the United States cannot have recourse to a legal remedy in order to become what they are already by the operation of the laws of nature.

It is legally inadmissible because the naturalization laws require the renunciation of the allegiance due by the applicant at that time to "any foreign prince, potentate,

state * * *" The citizens of Porto Rico owe national allegiance only to the Constitution and the statutory laws of the United States (Sections 16 and 14 of the Act of April 12, 1900), and cannot be asked, therefore, to renounce such foreign allegiance, which they have already renounced forever.

Fifth Point.

The statement that the treaty of Paris, unlike earlier treaties, *did not undertake* to make the native inhabitants of Porto Rico citizens of the United States, is not exactly accurate. So far as it assumes on the part of the framers of the treaty the purpose of depriving said inhabitants of their national citizenship, it is contradicted by the form in which their status was changed by the United States Government before the article about citizenship was stipulated. Said assumption is inconsistent also with the explicit purpose of the suggestion made by the President of the United States to the Peace Commissioners, in the matter of citizenship, and by the solemn declarations of said Peace Commissioners upon the article of the treaty on the nationality of the inhabitants of the ceded territories.

Sixth Point.

The quotation of paragraph second only, of Art. IX of the Treaty of Paris, to reach a judicial interpretation of Sec. 7 of the Foraker Act, constitutes an incomplete quotation to conclude that this legislation has not operated to effect a naturalization of the native inhabitants of the territory of Porto Rico as citizens of the United States.

Seventh Point.

The conclusion that a native of Porto Rico, "being foreign born and not naturalized, remains an alien," when applied to a citizen of said territory is inconsistent with Sec. 7 of

the Act of April 12, 1900, with other sections of the same Act, and with the statutory laws of the United States, and with the provisions of the Fourteenth Amendment to the Constitution in regard to the right to the equal protection of the laws guaranteed by said Amendment to any person under the jurisdiction of the United States.

First Point.

The decision stating the facts on which all its reasoning is based, affirms that:

"The petitioner, * * * is a native of Porto Rico."

Section 7 of the Act of April 12, 1900, applied by the Circuit Court to the decision of the case, provides:

"That all inhabitants continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in Porto Rico, * * * shall be deemed and held to be citizens of Porto Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain, * * * and they, together with such citizens of the United States as may reside in Porto Rico shall constitute a body politic under the name of the people of Porto Rico."

All inhabitants of Porto Rico, whether natives of the Island or born in any foreign country, or in the United States, who had become Spanish subjects, and were Spanish subjects on the eleventh day of April, 1899, are declared to be citizens of Porto Rico, with the sole exception of those who preserved their allegiance to the Crown of Spain, and *are incorporated in one body politic with those who were already American citizens.*

Assuming that the petitioner is a citizen of Porto Rico as

I understand her to be, the opinion establishes an unwarranted discrimination in stating that the petitioner "is a native of Porto Rico." Such discrimination is unwarranted so far as Section 7 of the Act of April 12, 1900, is concerned, because the law does not make any distinction between the inhabitants.

This statement of facts appears also to be misleading. It directs the attention to the inquiry whether a *native* of Porto Rico is a citizen of the United States, diverting the discussion from the real legal question raised by the Circuit Court decision which is in my judgment, whether "a *citizen* of Porto Rico is a citizen of the United States."

Second Point.

After having thus stated the facts, the decision of the United States Circuit Court enounces the legal proposition to be discussed in the following words: "The only question open for discussion on this application is whether or not the petitioner is an alien."

In my opinion this statement constitutes another error because the Immigration Laws enforced in the case under consideration apply to passengers who are not citizens of the United States *and who come from a foreign port.*

Section 1 of said Act entitled "An Act to regulate immigration," approved August 3, 1882, provides:

"That there shall be levied, collected and paid, a duty of fifty cents for each and every passenger not a citizen of the United States who shall come * * * *from a foreign port to any port within the United States.*"

Section second of the same Act, in reference to the question involved, declares:

"And * * * if there shall be found among *such passengers,* * * * any person unable to take care of himself or herself

without becoming a public charge, * * * said person shall not be permitted to land."

The law requires therefore in such a passenger two essential conditions in order to subject him to its restrictions.

First—That such passenger shall not be a citizen of the United States.

Second—That such passenger shall come "from a foreign port to any port within the United States."

Not one, but two questions are, therefore, in my opinion open to discussion in the case of Isabella Gonzalez.

First, whether the petitioner is not a citizen of the United States; and,

Second—Whether any port of the Territory of Porto Rico can be considered "a foreign port" for the purposes of the Immigration Laws.

In relation to this second point, I maintain that no port of the Territory of Porto Rico can be considered as a "foreign port" for the purposes of the Immigration Laws; and that, even if the petitioner were an alien—which I deny—the provisions of the Immigration Laws should not apply to her.

The opinion of this Honorable Court rendered by Justice Brown in De Lima v. Bidwell, after reviewing previous decisions, and studying the precedents of the annexation of other Territories of the United States, to wit, Louisiana, Florida, Texas, California and Alaska, concludes:

"It follows from this that, by the ratification of the Treaty of Paris the Island became territory of the United States—although not an organized territory in the technical sense of the word."

Analyzing the theory that a country may be domestic for one purpose and foreign for another, the opinion quoted plainly declared that:

"We are unable to acquiesce in this assumption that a

territory may be at the same time both foreign and domestic."

The reasoning of the opinion leads this Honorable Court to declare that:

"Porto Rico was not a foreign country, * * * but a territory of the United States."

In Downes *v.* Bidwell, the opinion maintained the same doctrine, deciding that:

"We are therefore of opinion that the Island of Porto Rico is a territory appurtenant and belonging to the United States."

It is beyond my comprehension how the ports of a territory that is "not a foreign country, but a territory of the United States," can be considered as "foreign ports."

In favor of my opinion I would quote decisions of the Departments of Justice and of the Treasury.

These very Immigration Laws were already in force in August, 1902, in the ports of Porto Rico against each and every passenger not a citizen of the United States, who arrived there "from a foreign port." A few months before, the question was raised whether the money collected in Porto Rico from the head tax on alien passengers brought into ports of that territory, should be accounted for and credited to the "immigrant fund" as is done with like collections upon alien passengers arriving at ports of the mainland. The question was decided in the affirmative by the Department of Justice. The decision rendered on July 15, 1902, reads as follows:

"Among the statutory laws of the United States 'given force and effect in Porto Rico' by said act (the Porto Rican act) is 'an act to regulate immigration' (22 Stat., 214), approved August 3, 1882. * * * The act provides that

this duty shall be paid the collector of customs of the port to which such passenger shall come, * * * and that, 'the money thus collected shall be paid into the United States Treasury, and shall constitute a fund to be called the immigrant fund, and shall be used, * * * for the care of immigrants arriving *in the United States*, * * * *Provided*, That no greater sum shall be expended for the purposes hereinbefore mentioned at any port than shall have been collected at such port.'

"If section 14 of the Porto Rican Act really gives 'force and effect' to said Immigration Act in Porto Rico, the money collected thereunder must be paid into the United States Treasury, and devoted to the purposes designated in said Act. Unless this is done, the purpose of the Act is clearly defeated.

"If this is done the spirit of Section 4 will be carried out as well as the letter of Section 14, for the money collected in Porto Rico under said Immigration Act will undoubtedly all be expended *at the various ports in Porto Rico* where it shall have been collected, and Porto Rico receive the benefit thereof." (Opinions, Attorney General, Vol. 24, pages 87-88.)

According, therefore, to the doctrine maintained in this decision the words "United States" as used in the law, mean the territory of Porto Rico, and the ports of said Territory are "ports in the United States."

The same theory has been affirmed by the Treasury Department in the case of an alien, Hans Carlson, a native of Norway, who arrived at the port of Boston, Mass., coming from Ponce, Porto Rico. In the decision rendered April 22, 1903, the Hon. F. A. Reeve, Acting Solicitor of the Treasury Department, held that:

"An alien passenger coming from a port of Porto Rico to a port of the United States proper, is not a person coming from a foreign port." In the opinion of the Solicitor, the Department concurs. (Treasury Department Decisions, Vol. 6, Thursday, April 30, 1903, page 18.)

As the status of the Territory of Porto Rico has not been declared changed by any law of Congress, nor any opinion of this Honorable Court in the period of time embraced between August 24, 1902, when Isabella Gonzalez landed, and April 22, 1903, it may be properly inferred that also in the opinion of the Treasury Department the ports of Porto Rico were no more "foreign ports" at the first date than at the second.

The action therefore of the Immigration authorities in applying to passengers coming from the ports of Porto Rico to the ports of the mainland, the restrictions of the Immigration Laws as if they came from a foreign port, is unwarranted by the Immigration Laws of the United States even in case such passengers should be aliens.

Although not applicable to the case decided by the Circuit Court, because subsequently enacted, the law entitled "An Act to Regulate Immigration of Aliens into the United States," approved March 3, 1903, expressly maintains the same principle covering these cases. Section 2 of this act provides:

"That the following classes of aliens shall be excluded from admission *into the United States*" (here follows the enumeration of the classes of aliens excluded.)

Section 33 of the same act reads as follows:

"That for the purposes of this act the words 'United States' as used in the title as well as in the various sections of this act shall be construed to mean the United States and any waters, territory or other place now subject to the jurisdiction thereof."

The Circuit Court therefore erred when affirming that the only question open for discussion is whether or not the petitioner is an alien.

Third Point.

The opinion begins to lay the foundation of its theory by stating that:

"The Fourteenth Amendment to the Constitution provides that all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States."

Assuming this quotation to be exact, for the purposes of the discussion, the theory that the native-born Porto Ricans are "aliens", might be maintained on the ground that they have been expressly declared by the Act of April 12, 1900, to be "citizens of Porto Rico", and therefore this citizenship necessarily excludes all possibility of the same persons being at the same time citizens of the United States.

This reasoning, however, would be defective on two fundamental points:

First, because it would imply the theory that a nation has jurisdiction to establish the status and to require allegiance to its own constitution and laws, not only of its own citizens, but of the citizens of other countries; that is, of aliens, against elementary conceptions of international law.

And, second, because it would imply that the citizens of the United States who reside in Porto Rico forming part of that *body politic*, "The People of Porto Rico" created by Section 7 of the Act of April 12, 1900, have been deprived by Congress of their United States citizenship. This last assumption is inadmissible because it is inconsistent with Article XIV of the Constitution, which prohibits the enactment or enforcement of "any law which shall abridge the privileges and immunities of citizens of the United States."

But I will not analyze further this hypothesis because the quotation of the Circuit Court is not exact; and it is not exact because it is incomplete.

The Fourteenth Amendment to the Constitution reads as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States *and of the State wherein they reside.*"

The opinion of the Circuit Court, by omitting the words here printed in italics, deprives the definition of citizenship of an essential characteristic of our constitutional system. The constitutional prescription establishes a double allegiance, a double citizenship; local and National. The citizen of a State or Territory of the American Union owes allegiance to the laws of the Commonwealth wherein he resides and to the Constitution and laws of the United States.

The same double allegiance has been required from the Porto Rican citizens by Article 16 of the Act of April 12, 1900, before quoted, when it provides that they will take an oath to support the Constitution (National allegiance) and the laws of Porto Rico (local allegiance). Article 14 of the same act completes the National allegiance required from them by declaring the statutory laws of the United States in force and effect in that Territory with the sole exception of the internal revenue laws.

Furthermore the Fourteenth Amendment does not require the Territory in which the person is born to be United States territory *at the time of his or her birth.* It is therefore inconsistent with said Amendment to deny to a person born in the United States, subject to its jurisdiction and declared by Congress to be a citizen of a United States territory, his or her National citizenship on the ground that said territory was not United States territory at the time of his or her birth.

The quotation of the Fourteenth Amendment of the Constitution as it appears in the decision of the Circuit Court

is therefore incomplete and misleading in its bearing upon the case under consideration.

Fourth Point.

On that foundation the theory of the opinion is opened with the following syllogism:

"It is not disputed that the petitioner was by birth an alien; unless in some appropriate way she has since been naturalized, she is still an alien."

In the first premise of this syllogism the opinion commits the error that Aristotle called *fallaciæ dictionis*, because by the use of the verb *was* two completely different legal propositions may be expressed:

First, the verb *was* may refer to the time when Porto Rico was a province of Spain and the petitioner clothed with Spanish citizenship. Then the first premise ought to be understood as saying: "It is not disputed that the petitioner was *at the time* of her birth an alien." The statement is exact and not open to question. Then she could have been naturalized and the logical conclusion is that unless she had been naturalized, she was still an alien at the time of the transfer of sovereignty of the Territory of Porto Rico. But in such case the point does not appear pertinent to the decision of the case.

Second, the verb *was* of the first premise may refer to the time of the petitioner's detention at Ellis Island, when Porto Rico had ceased to be a province of Spain, had become territory of the United States, and its inhabitants subject to the jurisdiction thereof. Or in other words, the verb *was* refers to the *present status* of the petitioner. Then the first premise signifies that: "It is not disputed that the

petitioner *is* by birth (on account of the nationality of the territory in which she is born) an alien." This seems to be the intended meaning of the phrase. But in such case the statement, as a statement, is erroneous on its face, because the legal question discussed by the opinion, is whether on account of being a native of Porto Rico, she is or is not an alien. As a syllogism the proposition constitutes a clear case of *petitio principii*. What the opinion assumes in the first premise is identical with the conclusion to be proved, and the error of logic consists in the fact that the Circuit Court seems not to be aware of it.

The opinion persists in the error of confounding the status of the petitioner while Porto Rico was a Province of Spain and she a Spanish citizen, with her status after the transfer of sovereignty, when amplifying the second premise of the syllogism it adds that:

"There is no suggestion that she was ever naturalized under the general laws prescribed by Congress regulating the admission of aliens to citizenship."

As the word *ever* is not limited in its meaning, it can refer to any time during the life of the petitioner, and the same ambiguity as before results. If we assume that this *ever* means while the petitioner was a Spanish citizen, the proposition that she could be naturalized is as before noted a perfectly admissible one. But the opinion seems rather to refer to the period of time included between the transfer of sovereignty of Porto Rico and the arrival of the petitioner at New York. It can almost be affirmed—in consideration of the pertinence of the question to the case—that this is the meaning of the statement. In such case the action on the part of the petitioner that the opinion refers to, her

naturalization under the statutory laws, is juridically and legally inadmissible.

In order to see the juridical inadmissibility of the proposition it is enough to observe that to be naturalized means to become, through a legal formality, "as a native" of the territory of a given nation. The petitioner, because she is born in a given territory of the United States, cannot, since that territory is United States territory, have recourse to a legal fiction, to become what she already is by operation of the laws of nature.

And to observe the legal inadmissibility of the proposition stated in the opinion, it will suffice to read the naturalization laws.

These laws, in order to admit an alien as a citizen require that he renounce "forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereign of which the alien may be *at the time* a citizen or subject." (Revised Statutes of the United States, Section 2165.)

At the time comprehended between the transfer of sovereignty of the Territory of Porto Rico and the arrival of the petitioner at New York, she was not a subject of any foreign prince, potentate, state or sovereignty. According to the Porto Rican Act, as we have already seen, the Porto Rican natives with the other citizens of that territory owe allegiance and fidelity to the Constitution of the United States, and the laws of Porto Rico (Section 16) and to the Statutory Laws of the United States (Section 14). The theory that a person can renounce forever the allegiance to the United States to become a citizen of the United States appears clearly inadmissible. The naturalization laws, intended for aliens, cannot therefore apply to the native citizens of Porto Rico.

Fifth Point.

The opinion of the Circuit Court states:

"The Treaty of Paris, unlike earlier treaties which dealt with the Louisiana and Florida purchases, with California and with *Alaska, did not undertake to make the native born inhabitants of* Porto Rico citizens of the United States."

This statement is misleading and not exactly accurate. The error seems to proceed from a misconstruction of a *dictum* of this Court, when in Downes *vs.* Bidwell reference was made to previous treaties in order to demonstrate the inacceptability of the theory that the inhabitants of a ceded territory could become, immediately upon annexation, whether savage or civilized, clothed with the rights, privileges and immunities of citizens of the United States. This reference to the previous treaties is in my judgment perfectly logical.

But the provisions relating to citizenship referred to in the Circuit Court's decision, are not identical in the several treaties and cannot, therefore, form a congruent term of comparison. In the case of Louisiana, the treaty provides for the admission of the inhabitants "to the enjoyment of all the rights and immunities of citizens of the United States," without making any distinction among them. In the case of California, the treaty leaves to the Mexicans the privilege of retaining their former allegiance, those who do not exercise it being considered as e cting the new nationality in like manner as is stipulated in the Treaty of Paris for the citizens of Porto Rico, natives of the Spanish Peninsula; and, in the case of Alaska, distinction is made between "the inhabitants" for whom a similar provision is made, and the "uncivilized native tribes," who will be subject "to such laws and regulations as the United States may adopt."

We shall see later that the provisions of this last treaty served as a precedent for the provision of the Treaty of Paris relating to citizenship contrary to what seems to be understood by the opinion.

The comparison thus made appears even less justified by the juridical position of the inhabitants of the Territories with relation to the United States, at the time in which the earlier treaties were concluded, and that of the inhabitants of Porto Rico when the article under consideration was framed.

A brief consideration of the status of the latter when the article of the Treaty of Paris was drawn, and the plain declaration of its authors, will evidence that the purpose attributed to them by the opinion is erroneously assumed.

Status of Porto Rico and Its Inhabitants Previous to the Transfer of Sovereignty.

By the laws of the Indies, Porto Rico, as the other Spanish-American countries, was "incorporated into our Royal Crown of Castille"—as the King said—Law I, Title I, Book III, of the Laws of Indies. (Ley 1ra. Titulo 1ro. Libro 3 de las Leyes de Indias.)

In the application of this principle, so early as in 1511, the privilege was granted to Porto Rico to send representatives to the Court of Spain. (Procuradores en Corte.) Royal Order of the Queen Doña Ana, of the 26th of February, 1511.

By the Royal Decree dated November 24, 1698, the Porto Ricans, like other Spanish Americans, were declared to be entitled "to the same honors and prerogatives as the native-born in Castille, as has been the practice without discussion, they having obtained all kinds of positions and dignities." (Zamora y Coronado, "Legislación Ultramarina," Tomo I, p. 255–257.)

When the Supreme Central Board, governing Spain, opened the constitutional and parliamentary period, convoking the first Constitutional Convention, it issued orders on January 22, 1809, convening the representation of Porto Rico, on the ground, according to the language of the law, that the Spanish dominions in the West Indies, "are not properly *colonies* * * * as those of other nations, *but an essential and integral part of* the Spanish Monarchy." (The italics are mine.) (Zamora y Coronado, "Legislación Ultramarina," Tomo 1ro, pag. 257.)

Porto Rico was represented in that Constitutional Convention by one of her sons, Ramón Power, who was chosen by that illustrious body as its Vice-President. Article First of the Constitution of 1812, promulgated by the Cortes, defined the Spanish Nation as " the reunion of the Spaniards of both hemispheres."

The Decree of the same Cortes, dated in the Island of León (Cadiz) on the 9th of February, 1811, declares the Spanish Americans to have a complete equality of rights with the Spaniards of the Peninsula. (Legislación Ultramarina, *Ibid*)

The doctrine and the precedent settled in 1809 were afterwards followed in every one of the Constitutional periods of Spain. The Constitutional guarantees were in force in Porto Rico whenever the Spanish Península enjoyed them, and representatives were sent by the Island to the National Congress, with the sole exception of the period from 1837 to 1868, in which the Islands were unjustly deprived of their legal share in the national sovereignty. The revolution of Spain in 1868 ended that period and the representation of Porto Rico was again convened to the Cortes of 1869. On August 6, 1873, the Cortes extended to Porto Rico Title I of the Constitution. The preamble of the Law explains this action as follows:

" Whereas the present political situation of the Spanish

Nation is based on the principles of Democracy whose first tenet is that of the natural rights of men anterior and superior to all positive law;

"Whereas, these rights are affirmed in Title I of the Constitution of 1869;

"Whereas the succeeding titles refer to the organization of public powers which matter the present Cortes is specially called to consider and finally settle;

"Whereas the culture of the inhabitants of the Island of Porto Rico in itself should be sufficient, if other reasons of right did not exist, to proclaim in that Island all the liberties required by civilized countries;

"Whereas the Governor of that Island has deemed that the conditions there demanded the proclamation of freedom of the press and the right of the people to assemble in reunions and associations and has administratively promulgated these measures;

"Whereas these measures, like the abolition of slavery, had fully produced the most desirable effects;

"Whereas reasons of justice united to those of convenience, make it impossible to postpone for a single moment, on any pretext, the declaration and explicit acknowledgment of the inherent rights of the human personality in the enlightened, peaceful and loyal island of Porto Rico * * *." (Translated from "La Isla de Puerto Rico, Bosquejo Histórico," por Don J. G. Gomez y Don A. S. Burin, pp. 106–107, Madrid, 1891.)

The number of Representatives of the island in the National Congress increased from eleven in 1869 to sixteen members of the House (Congreso de los Diputados) and four Senators in the Senate (Senado), at the last election held in March, 1898. The last Spanish constitution of 1876 was also extended to Porto Rico. The Government of Spain, enabled by its Article 81, promulgated in Porto Rico the "Constitution Establishing Self Government" in the Island, by Royal Decree of November 25, 1897, a translation of which has been published by the War Department (1899).

Even after the cession of Porto Rico to the United States, the legal doctrine affirmed in the legislation above quoted has been applied by Spain to the natives of Porto Rico who inhabit the Spanish Peninsula. Thus, among other cases, while it was discussed here whether or not the Civil Service laws were applicable to citizens of Porto Rico (a question decided in the affirmative by the Civil Service Commission), Spain has not found any legal obstacle in appointing native Porto Ricans to her public offices, as in the case of Mr. Wals y Merino, now in her diplomatic service and in her embassy at Washington (Diplomatic List, Department of State, February, 1903, p. 12); while it was doubted whether or not the citizens of Porto Rico could enjoy the privilege of being admitted as cadets at West Point and Annapolis (a question decided also in the affirmative by Congress in its last session), Spain has not found any legal obstacle in having many native Porto Ricans appointed among the officers of her army, as in the case of the present military Governor of the Province of Granada, General Manuel Nario y Guillermety (Guia Oficial de España, 1902 p. 392); while the right to vote is denied to Porto Ricans residing in Illinois and the Hawaiian Islands, and accorded to them in Baltimore, Md., in Spain there is no legal obstacle to elect them as Senators to the Spanish Senate, as in the case of Mr. Garcia Molinas, the Porto Rican native who is at present a Senator from the Province of Zamora. (Guia Oficial de España, 1902, p. 67) and in the more remarkable case of Mr. Enrique Gonzalez, another native Porto Rican recently elected Senator by the Province of Zaragoza, who was an inhabitant residing in Porto Rico on the eleventh day of April, 1899.

Perhaps a misinterpretation of these facts, and especially the idea that the Porto Ricans have as yet only a Resident Commissioner in the United States, may give the erroneous

impression that the status of the native-born Porto Ricans has remained unchanged. To this be it observed that in the last days of the 57th Congress the House of Representatives approved by a unanimous vote a bill giving to Porto Rico a Delegate on its floor, as unanimously recommended by its Committee on Insular Affairs. (Congressional Record, March 2, 1903.)

How This Status Was Changed.

(a) *Under the Military Government of the United States.*

In July, 1898, the military forces of the United States invaded the island of Porto Rico, acting under the authority conferred on the Executive by the Constitution.

On the 28th of that month, General Miles issued a proclamation declaring that the military forces of the United States had come "to occupy the island of Porto Rico", bringing to the inhabitants "the fostering arm of a nation of free people, whose greatest power is in justice and humanity to all those living within its fold. Hence, *the first effect of this occupation will be the immediate release from your former political relations*". This declaration was followed by the assurance that in exchange for those former political relations the United States army came to "bestow upon" the people of Porto Rico "the immunities and blessings of the liberal institutions of our Government." (Annual Reports of the War Dep., Part 3, Rep. of the Mil. Gov. of P. R. on Civil Affairs, Wash., 1902, p. 19.)

The Porto Rican people accepted with transports of joy those declarations. Their leaders had long before explained to them that the institutions of the United States constituted the highest achievement in the organization of liberty and the sovereignty of the people. And their leaders knew well those "liberal institutions"; they em-

bodied their political ideals, and on account of their love for such ideals they had incurred the hostility of the former government and suffered persecutions, especially during the period in which the people of the island were deprived of Constitutional guarantees (1837–1868) (Spanish Official Documents quoted by A. Acosta Quintero in his book, "José J. Acosta y su tiempo", Vol. I, pp. 320 and 327. "The Political Status of Porto Rico", by F. Degetau p. 12).

The invading army thus obtained the unanimous welcome, the moral support and the earnest co-operation of the Porto Ricans.

The proclamation of General Miles will remain as a lesson of military acuteness, teaching that to conquer does not always mean to kill and to destroy. He understood well the superior moral incentives that would appeal to the public spirit in the Island, and trusted the outcome of his enterprise to the influence of ideas. His success was due not to the almost silent mouths of cannon, but to the prestige of the fathers of this Republic, the glorious framers of its institutions.

"The cheerful acceptance of the Government of the United States" asked by the proclamation of General Miles was so indisputable, that the transfer of sovereignty was morally an accomplished fact when, a few days afterwards, the Government of the United States required from Spain as one of the conditions for the suspension of hostilities, the cession of the Island (Foreign Relations of the United States, 1898, p. 821).

The acceptance by Spain of these conditions made in the message of the Spanish Government of August 7th was not considered sufficient by the United States Government (For. Rel., 1898, pp. 823, 824), and the transfer of sovereignty over the Island was stipulated in Article 2 of the

Protocol signed at Washington on August 12, 1898, as follows:

"Spain will cede to the United States the Island of Porto Rico and other Islands now under the Spanish Sovereignty in the West Indies."

In pursuance of this agreement commissions were appointed by the Government of the United States to superintend the evacuation of Porto Rico and to negotiate the treaty of peace. We shall consider later the work of this last commission so far as the question under discussion is concerned. The commission for the evacuation of Porto Rico, formed by Major General Brooke, Rear Admiral Schley and Brigadier General Gordon, received the following instruction from the President of the United States:

"You will bear in mind that Porto Rico and the other islands mentioned, except Cuba, *are to become territory of the United States*" ("Foreign Relations of the United States, 1898," p. 911.)

The evacuation took place on the 18th of October of the same year. Major General Brooke, acting as Military Governor, in accordance with the instructions before quoted, issued on the same date his General Order, Number 1, in which the transfer of sovereinty was confirmed as follows: "The cession of Porto Rico with its adjacent islands to the United States, has severed the political relations of the inhabitants thereof with the Kingdom of Spain." By the same order the administration of the laws was entrusted to "the judges and all other officials connected with the administration of justice who accept allegiance to the United States," and the same allegiance was also required in the execution of the "provincial and municipal laws from the local constabulary and police." (Report of Brigadier General Davis, 1899, Wash., 1900, p. 89.) In the enforcement of this order, allegiance to

the United States was required by the military government from all persons in any way connected with the administration.

This allegiance was not certainly the "honest submission" that was asked by the American Government of the inhabitants in the case of Cuba, "to receive the reward of its support and protection" (General Order No. 101, July 13, 1898, President McKinley to the Secretary of War,) nor the "absolute and unconditional loyalty to the United States" that was to be required of the natives of the Philippine Islands to be appointed for civil officers according to the instructions of President McKinley to the Philippine Commission (Public Laws and Resolutions passed by the U. S. Phil. Com., War Dep., Wash., 1901, p. 8). In the case of the Islands in the far East the oath administered by the Government is to the effect that the Filipino "recognizes and accepts the supreme authority of the United States of America" and declares that he "will maintain allegiance *to that nation*" as exercising there that supreme authority (Public Laws and Resolutions passed by the U. S. Phil. Com., p. 429).

In the case of Porto Rico the oath required from the inhabitants during the military government was a plain renunciation of all foreign allegiance and an explicit acceptance of the duties of American citizenship, as may be seen by the following certificate:

"SUPREME COURT OF PORTO RICO.
ISLAND OF PORTO RICO.

"I, Antonio F. Castro, Secretary of this Supreme Court of Porto Rico, upon application duly made by the Honorable Federico Degetau now Resident Commissioner of Porto Rico to the United States of America, do hereby certify that, in compliance with certain military orders, decrees or directions, and during said military government, the said

Federico Degetau, as Attorney at Law, took an oath before the Supreme Court of Porto Rico, as then constituted, renouncing forever all allegiance to any prince or potentate, or foreign sovereignty and particularly that of the government and sovereignty of Spain. And that he will support and defend the Constitution of the United States against all enemies home or foreign and he will adhere thereto with fidelity and submission and that he took said oath freely and without reservation or purpose of evasion.

"Witness my hand and the seal of the Supreme Court, on this 25th day of November, 1902.

(Signed) ANTONIO F. CASTRO, Secretary of the Supreme Court of Porto Rico."

In pursuance of the same policy the native Porto Rican Judges were authorized to administer oaths of allegiance to aliens. A list of 1,100 aliens who declared before them their intention to become American citizens, appears on page 115 of Governor Allen's Report (Washington, 1901).

In that way was our status changed under the American military government.

Section 8 of the Porto Rican Act confirms the legal force of the military orders when it declares that the laws and ordinances of Porto Rico "shall continue in full force and effect, * * * except as altered or modified by military orders and decrees in force when this Act shall take effect."

(*b*) *Under the Provisions of the Treaty of Paris.*

The transfer of sovereignty, that changed the status of the Territory and of its inhabitants under the military government of the United States, was, therefore, an accomplished fact, when some months later the American and Spanish commissioners held in Paris the conferences in which the agreement of both nations stipulated in the protocol of Au-

gust 12, 1898, was confirmed as recommended by President McKinley. (Instructions to the Peace Commissioners, September 16, 1898. "Foreign Relations, 1898," p. 906.)

Article II of the protocol was literally reproduced, forming Article II of the treaty, which provides that:

"Spain cedes to the United States the Island of Porto Rico, and other islands now under Spanish sovereignty in the West Indies."

Spain did not abandon her sovereignty in Porto Rico. She did not even relinquish it. She confirmed the transfer of sovereignty already accomplished under the military government and agreed to by a former diplomatic transaction. Her commissioners could not therefore intend to discuss the status of the native inhabitants of an island that had already accepted cheerfully the American sovereignty and to whom the oath of allegiance to the new sovereignty had been administered by the proper authorities. The statement, therefore, of the Circuit Judge's decision that the "treaty of Paris, unlike earlier treaties * * * did not undertake to make the native-born inhabitants of Porto Rico citizens of the United States," so far as it can be interpreted as attributing a given intention to the Spanish Commissioners, is not justified by the facts.

Let us examine what was the real intention of the American Commissioners.

The history of the stipulations referring to the article about citizenship has been officially recorded, and it is easy to ascertain the real purpose of the American Commissioners.

On the 29th of November, 1898, the Honorable Secretary of State forwarded to the President of the United States Peace Commission, Mr. Day, the following telegram:

"The President wishes to know the opinion of the Commission as to inserting in treaty provisions on the subject of

citizenship *of inhabitants of Philippines which will prevent extension of that right to Mongolians and others not actually subjects of Spain;* also whether you consider it advisable to provide, if possible, for recognition of existence of *uncivilized native tribes in same manner as in Alaska treaty, perhaps leaving to Congress* to deal with status of inhabitants by legislative act.

HAY."

(Foreign Relations of the United States, 1898. Correspondence with the United States Peace Commissioners, p. 961.)

Article III of the Alaska treaty referred to, provides that:

"The inhabitants of the ceded territory, according to their choice reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country." (Compilation of Treaties in Force, 1899, p. 538.)

In the conferences of the 30th of November and of the 6th of December the question of nationality was discussed by the Joint Commission. It is enough to read the discussion of this subject as it appears from the protocols in order to see that the classification of the inhabitants as native of the Spanish Peninsula and native of the territories ceded, was made in answer to the suggestion of President McKinley in the quoted telegram that the American Commissioners were closely following. (Treaty of Peace between the United States and Spain. 55th Congress Document No. 52, Pt. 1, Message of the President, 1899, pp. 236–239.)

But the intention of the American Commissioners is not a matter of legal conjecture. Their explanations make plain and unmistakable the purpose of the treaty.

The Spanish Commissioners, in the Memorandum about the articles rejected by the American Commission, affirmed that the latter had refused "to acknowledge the right of the inhabitants of the countries ceded or relinquished by Spain to choose the citizenship with which up to the present they have been clothed," insisting upon the sacredness of this right of human beings, "constantly respected since the day in which man was emancipated from serfdom." (*Ibid.*, p. 258.)

In answer to that objection, the American Commissioners explained how they understood the article that they had submitted, which was definitely incorporated in the treaty as Article IX. The explanation of the American Commissioners clearly demonstrates that the wording of the Article was aimed against the extension of citizenship by the action of the treaty to the "Mongolians and others not actually subjects of Spain" and to the "uncivilized native tribes" of the Philippine Islands to whom the President referred in his telegram.

The explanations of the article offered in a high spirit of honesty, as shown by its unmistakable terms, read as follows:

"The American Commissioners do not so understand the article upon the subject of citizenship. * * * An analysis of this article will show that Spanish subjects, natives of Spain, are allowed a year's time in which * * * they may preserve their allegiance to Spain.

"As to natives, their status and civil rights are left to Congress, which will enact laws to govern the ceded territory. This is no more than the assertion of the right of the governing power to control these important relations to the new government. The Congress of a country which never

has enacted laws to oppress or abridge the rights of residents within its domain * * * may safely be trusted not to depart from its well settled practice in dealing with the inhabitants of these islands.

"It is true that the Spanish Commissioners proposed an article upon the subject of nationality, * * * which provides that all inhabitants of the ceded territory other than Spanish subjects shall have the right to choose the Spanish nationality. * * * This would permit *all the uncivilized tribes* which have not come under the jurisdiction of Spain, as well as foreign residents of the islands to elect to create for themselves a nationality other than the one in control of the territory, while enjoying the benefits and protection of the laws of the local sovereignty." (Treaty of Peace, Message from the President of the United States, 55th Congress, Document No. 62, Annex 1 to Protocol No. 22, p. 261.)

From this explanation it clearly results that the words "native inhabitants" employed by the treaty were intended to describe "all the uncivilized tribes which have not come under the jurisdiction of Spain", and to distinguish them from the inhabitants of the countries ceded which up to the date of the stipulation of the treaty were clothed with Spanish citizenship. The treaty therefore did not undertake to include under the classification of "native inhabitants," primarily intended to designate the uncivilized tribes of the Philippine Islands, the Spanish citizens born in Porto Rico who were clothed with Spanish citizenship.

A treaty made under the authority of the United States is considered by the Constitution as "the supreme law of the land". The framers of a treaty take therefore the place of the law-making power, and, referring to the value of the intention of the legislator in the construction of the law, this Honorable Court held in Territory of Hawaii *vs.* Osaki Mankichi that:

"Without going back to the famous case of the drawing of blood in the streets of Bologna, the books are full of

authorities to the effect that the intention of the law-making power will prevail, even against the letter of the statute, or, as tersely expressed by Mr. Justice Swayne in Smythe *v.* Fisk (23 Wall., 374, 380): 'A thing may be within the letter of a statute and not within its meaning; and within its meaning though not within its letter. The intention of the law-maker is the law.' A parallel expression is found in the opinion of Mr. Chief Justice Thomson of the Supreme Court of the State of New York (subsequently Mr. Justice Thomson of this Court) in People *v.* Utica Ins. Co. (15 Johns., 358, 381): 'A thing which is within the intention of the makers of a statute, is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers.'

"Without going further, numerous illustrations of this maxim are found in the reports of our own Court. Nowhere is the doctrine more broadly stated than in The United States *v.* Kirby (7 Wall., 482). * * * 'All laws,' said the Court, 'should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence.' * * * 'The reason of the law in such cases should prevail over its letter.'"

Sixth Point.

After quoting the second paragraph of Article IX of the treaty, and Section 7 of the Act of April 12, 1900, the decision states that:

"This legislation has not certainly operated to effect a naturalization of the petitioner as a citizen of the United States."

The quotation made is incomplete, so far as the treaty is concerned, for two reasons: First, because the decision overlooks Article II of the Treaty in which the change of sovereignty was confirmed. Second, because it quotes only

the second paragraph of Article IX, and does not take into consideration the first paragraph of the same article which is essential to a judicial interpretation of Section 7 of the Act of April 12, 1900.

By Article II Spain confirmed the cession to the United States of the Island of Porto Rico and other Islands under Spanish sovereignty in the West Indies.

It is an accepted principle in international law that the nationality of a person follows the nationality of the territory in which such person is born; the word nationality, from the Latin word *nascor* (to be born), being self explaining. This principle has been maintained by this Court when it was decided in Jobin *vs.* Walkingshaw (McAll, 186) that: "On a transfer of territory by one nation to another the political relations between the inhabitants of the ceded territory and the former government are changed and new ones arise between them and the new government."

Concerning Porto Rico the Department of Justice fully concurs in this view when in the case of Mr. Garcia Molinas, the Hon. Attorney-General Knox on May 13, 1902, decided that:

"A native Porto Rican, an artist by profession, although temporarily living in France, on the 11th of April, 1899, is under Sect. 7 of the Act of April 12, 1900 (31 Stat. 79), a citizen of Porto Rico and as such is an American artist." (24 Opinions Attorney-General, p. 40.)

It is true that in the opinion of the Attorney-General occurs the phrase "It will be observed that paragraph 703 (of the Tariff Act of July 24, 1897), does not mention citizenship, but uses the phrase 'American artists.' It is clearly not inconceivable for a man to be an American artist within the meaning of such a statute and yet not a citizen of the United States."

This statement is most perplexing for me. I cannot conceive how a native of a Territory of the United States because he is "a citizen" of said Territory and "as such (as such a citizen) is an American" can be at the same time "not a citizen of the United States." The illustration of the decision that explains the statement, is even more confusing for me when applied to Porto Rico. "An American tribal Indian, or a native Alaskan, for example, who should become an artist and go abroad might naturally be considered an American artist within the intent of the statute." I will not deny the possibility of the tribal Indians or members of the uncivilized native tribes of Alaska going abroad to study fine arts and becoming painters. All is in the hands of the Almighty. But such a case does not seem to have been contemplated by the framers of the tariff law, as it appears easier that members of the uncivilized tribes who become artists and go abroad to study will prefer to renounce the immediate allegiance to their several tribes and swear obedience to the Constitution and the statutory laws of the United States, as do the citizens of Porto Rico, and in such case they will also become American citizens.

This case cannot, however, occur in Porto Rico, as there are not native Indians at present. Already in 1543 there remained only sixty native Indians in the whole Island according to an official report of that epoch. (Report of the Census of Porto Rico, 1899, p. 29.)

On the other hand Porto Rico has not been organized by the Act of April 12, 1900, with the separate national character accorded to some Indian Tribes with whom the United States has made treaties. Said Act was enacted in order to end the military period and did not even restore the Constitution for Self-Government that the Island had received

from Spain in 1897, in great part through American influence.

The Attorney-General does not state what kind of Americans the citizens of Porto Rico are who pay taxes voted by the Congress of the United States, and swear allegiance to the Constitution and to the statutory laws of the United States. But it clearly appears in his learned opinion that the Porto Rican citizens are not "aliens" since he says:

"He (Mr. Garcia Molinas) is undoubtedly one of those turned over to the United States by Article IX of the treaty to belong to our nationality. * * * As his country became a domestic country and ceased to be a foreign country, within the meaning of the Tariff Act above referred to, and has now been fully organized as a country of the United States by the Foraker Act, it seems to me that he has become an American."

The Treaty of Paris, referred to and incompletely quoted by the Circuit Court's decision, has therefore operated to change the status of the Island and of its inhabitants, "turning them over to the United States" as the Attorney-General says.

I admit that a country (in the language of the Attorney-General) or a territory (in the language of this Court) can be ceded to a nation and that the cession may not always necessarily imply that the natives of the ceded territory become citizens of the nation acquiring the same. In our own legislation we have the precedent of the members of the uncivilized tribes of Alaska and the case of the Philippine Islands in which that question appears as a very doubtful one. But in the case of Porto Rico there is not room for doubt. Postponing the question of the incorporation of the Philippine Islands, Congress, as well as the Executive, has not asked from their inhabitants the oath to support the Constitution, nor the statutory laws of the United States,

and they do not form a *body politic* with the American citizens, as in the case of the citizens of Porto Rico. (Sec. 7 of the Porto Rican Act and Sec. 4 of the Act entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands and for other purposes," approved July 1, 1902.)

The case of the inhabitants of Porto Rico is, in my opinion, a clear case of collective naturalization as distinguished from individual naturalization, that happens when a country or province becomes incorporated in another country (Phillip, International Law, p. 382), the citizens of Porto Rico forming the same body politic with the other citizens of the United States and obeying and supporting the same Constitution and, with the sole exception of the internal revenue laws, the same statutory laws that all the other citizens of the United States obey and support.

The opinion failed to give due weight to the first paragraph of Article IX of the Treaty, according to which the nationality of the territory in which they may reside is guarantee to the inhabitants born in the Spanish Peninsula. This paragraph is essential to a judicial interpretation of Section 7 of the Act of April 12, 1900. Said section establishes the status of *all* the inhabitants, expressly declaring them to be citizens of Porto Rico. The native born in this Territory and the inhabitants born in the Spanish Peninsula were given the same political status. The distinction established in the Treaty was thus effaced by the legislation of Congress and the guarantee given to the inhabitants of the Spanish Peninsula was extended to the natives of the Territory. In the case of Porto Rico, both are to be held, therefore, as having adopted American nationality.

The only further question that could be raised would be whether the word *nationality*, in the language of the Treaty, means something else than national citizenship.

In that connection it is enough to remember that the word nationality is employed in international language, and specially by English and American diplomatists and statesmen, to mean citizenship. In that acceptation it is used, for instance, in the report of the Commission appointed by the Queen of Great Britain to inquire into the laws of naturalization and allegiance (1862) in the course of the great international discussion with American diplomacy about this subject. (Opinions of the principal Officers of the Executive Departments and other papers relating to expatriation, naturalization and change of allegiance. 1873, p. 70.)

The declarations of the American Commissioners in the discussion of the article of the Treaty under consideration, show that this was the exact meaning of the word. "The American Commissioners," they said, "do not so understand the article upon the subject of *citizenship*" (Annex 1 to Protocol No. 22, before quoted). Even if the meaning of the word nationality should not have been so defined, it is hardly admissible that the American Peace Commissioners could have seriously entertained the idea of guaranteeing to civilized men clothed with Spanish citizenship, by the use of the word *nationality*, the privilege of electing under the new flag a status similar to that of the members of the Indian tribes or of the uncivilized native tribes of Alaska. At any rate, such hypothesis is inconsistent with their declaration before quoted.

As Porto Rico is not a foreign country under the protectorate of the United States, but "a territory of the United States" (De Lima *vs.* Bidwell) and "a territory appurtenant and belonging to the United States" (Downes *vs.* Bidwell) the nationality or the citizenship of *all* the inhabitants of Porto Rico to whom the law refers is the United States citizenship.

Seventh Point.

The decision concludes that:

"Being foreign born and not naturalized she (the petitioner) remains an alien."

This statement is but a repetition of the syllogism with which the Circuit Court opinion assumes the conclusion at the beginning of its reasoning, saying:

"It is not disputed that the petitioner was by birth an alien; unless in some appropriate way she has been naturalized she is still an alien."

For that reason I will not discuss again this error, confining my observations to demonstrate the inconsistency of the conclusion of the Circuit Court's decision with the statutory laws and the Constitution of the United States.

In order to demonstrate "ad absurdum" the judicial conflict existing between the very section quoted in the opinion and its conclusion, so far as this means that the citizens of Porto Rico have remained aliens, it is enough to substitute in said section the word "aliens" instead of the words "citizens of Porto Rico." It will result that all inhabitants continuing to reside therein who were Spanish subjects * * * shall be deemed and held to be "aliens" except such as shall have elected to preserve their allegiance to the Crown of Spain * * * in accordance with the provisions of the treaty * * * and that they (the "aliens" who selected the American nationality, and the "aliens" who are natives of the Territory) together with such *citizens of the United States* as may reside in Porto Rico shall constitute a *body politic* under the name of the people of Porto Rico.

The conclusion of the opinion is also inconsistent with the

other sections of the said Act of April 12, 1900. Section 9, for instance, provides "that the Commissioner of Navigation shall make such regulations * * * as he may deem expedient for the *nationalization* of all vessels owned by the inhabitants of Porto Rico * * * and for the admission of the same to all the benefits of the coasting trade of the United States." This provision cannot be enforced if such inhabitants "remain aliens." The laws regulating commerce and navigation cannot protect in such case the interests of such inhabitants because Sec. 4131 of the Revised Statutes of the United States requires such vessels to be "wholly owned by citizens and to be commanded by a citizen of the United States." The citizens of Porto Rico, against the stipulations of Art. IX of the Treaty of Paris, cannot either carry on their professions when engaged in banking business if they aspire to the protection of the statutory National Bank Act, as directors of National Banks in said Territory, because according to said laws "every director must, during his whole term of service, be a citizen of the United States." (National Bank Act, approved June 7, 1872, Sec, 5146 Revised Statutes, U. S.)

If they "remain aliens," they could not prosecute claims against the United States in the Court of Claims, this privilege being reserved to American citizens, or to aliens who are citizens or subjects of a government which accords the same privilege to American citizens as provided in Sec. 1068 of the Revised Statutes.

This question was raised as a consequence of the decisions of this Court in the Insular cases. In order to avoid any misinterpretation as to the right of the native Porto Ricans, Congress enacted the law approved April 29, 1902.

Explaining the object of said law, to enable native Porto

Rican merchants to recover duties paid in Porto Rico upon articles imported from the several States, Senator Foraker plainly made in the report of his Committee (57th Congress, Report No. 1008) the following statements.

"The pending bill expressly confers jurisdiction on the Court of Claims, to adjudicate those claims. This is in order to remove *any possible doubt* which might arise *as to the right of the native inhabitants of Porto Rico*, upon whom Congress has not yet *expressly* conferred American citizenship, to sue the United States in that Court."

If Congress had not implicitly made the native inhabitants American citizens, this language could not have been used nor could their power to sue the United States before the Court of Claims have been considered as a *right*.

And that there is no room for doubt is vigorously expressed in the subsequent statement:

"While the Government does not question *the right of the petitioners as Porto Ricans* to maintain these suits we do not wish to leave the question open. The Supreme Court decided in the Dooley case that the Court has jurisdiction of the subject-matter of the claims; so we are *not endeavoring to extend* the jurisdiction of the Court of Claims over a class of claims of which it cannot now take cognizance."

These explanations show that Congress made the citizens of Porto Rico—the natives of the territory as well as the natives of the Spanish Peninsula—citizens of the United States, omitting only an *express* declaration for temporay political considerations and not with permanent juridical purpose.

If the national citizenship of the native citizens of Porto Rico were not *implicitly* acknowledged, that language could not have been employed by the learned chairman of the

Committee on "Pacific Islands and Porto Rico," Senator Foraker speaking on behalf of his Committee. This declaration coming from the author of the Porto Rican act, constitutes a precise indication of the intention of the legislators in this matter.

The inconsistency of the Circuit Court's decision with the statutory laws of the United States is proved also by the fact that if its judicial finding be true, the officials both of the local and of the national government who have applied to the native citizens, statutory laws made solely for American citizens, cannot, in some instances, escape legal responsibility for actions performed in the fulfillment of their official functions and in the enforcement of the act of April 12, 1900. For obvious reasons, I will quote only a case affecting myself and arising under the Immigration Laws.

In the fulfillment of my duty I have caused to be printed and published in said territory of Porto Rico, advertisements of the Civil Service Commission inviting the citizens, natives and residents of said territory, to take the necessary examinations in order to obtain employment in the United States Civil Service. Several obtained the position to which they aspired, some of them in this city of Washington; and I have assisted and encouraged them in the attainment of their purposes.

If the native citizens of Porto Rico remain aliens and subject to the provisions of the law regulating the admission of aliens who come to *the United States*, as the Circuit Court maintains, this action appears to me to be comprehended in in Sec. 3, of the Act of March 3, 1891, which declares:

"That it shall be deemed a violation of said act of February twenty-sixth, eighteen hundred and eighty-five, to assist or encourage the importation or migration of any

alien by promise of employment through advertisements printed and published in any foreign country; and any alien coming to this country in consequence of such advertisement shall be treated as coming under a contract as contemplated by such act."

Briefly, Section 14, declaring in full force and effect in Porto Rico the statutory laws of the United States, is practically abrogated, according to the conclusion of the Circuit Court, because the statutory laws of the United States, being intended for American citizens, cannot be applied to aliens.

The inconsistency of the theory of the Circuit Court's decision with the statutory laws of the United States appears expressly affirmed in the citizenship laws.

The declaration that the citizens of Porto Rico are "aliens," not only denies to the inhabitants born in the Spanish Peninsula who have adopted the American nationality, the right of expatriation, already exercised by them in accordance with the stipulations of the Treaty of Paris, but denies also the same right to the native inhabitants, who, as we have seen, cannot renounce a foreign allegiance that does not longer exist.

One of the greatest triumphs of American diplomacy in the nineteenth century has been to re-vindicate the right of expatriation as one of the natural and inherent rights of all people in opposition to the old English theory. This principle has been inscribed in our statutory books.

Section 1999 of the Revised Statutes of the United States declares that:

"Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty and the pursuit of happiness, and, whereas, in the recognition of this principle this gov-

ernment has freely received emigrants from all nations and invested them with the rights of citizenship; * * * Therefore, any declaration, instruction, opinion, order or decision of any officer of the United States which denies, restricts, impairs or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic."

Finally, the conclusion that, being foreign born, and not naturalized, she (the petitioner) remains an alien and subject to the provisions of the Immigration Laws, is inadmissible from a constitutional point of view.

The statement that she is foreign born as applied to the petitioner, meaning that she is a native of a territory that was foreign at the time of her birth, is made to deprive her of the right to the same protection of the laws that would be, and is, accorded to other members of the same *body politic.* In this respect such decision establishes an unconstitutional discrimination, because it denies to the native citizens of Porto Rico the right—considered as "a natural right" by this Court in Downes *vs.* Bidwell—to the equal protection of the laws, that according to Article XIV of the Constitution of the United States cannot be denied to "any person within its jurisdiction."

Conclusion.

From the foregoing analysis of the Circuit Court's decision it appears, in my opinion, clearly shown that by the Protocol of August 12, 1898, Porto Rico was ceded by Spain to the United States; that this session was confirmed by Art. II of the Treaty of Paris. Congress, by subsequent legislation, enacted laws for that territory under the clause of the Constitution relating to the territory of the United States (Art. IV. Sec. 3). The island, therefore, has ceased to be a

province of Spain and has become " territory of the United States—although not an organized territory in the technical sense of the word." (De Lima *vs.* Bidwell.)

It is further shown that under the military Government of the United States the inhabitants were released from their former political relations (General Miles' Proclamation—General Brooks' General Order No. 1), and took the oath to support the Constitution of the United States, renouncing forever all allegiance to any prince or potentate or foreign sovereignty and particularly that of the Government and sovereignty of Spain. This form of the transfer of sovereignty was confirmed by the Act of April 12, 1900.

Thus the inhabitants have acquired United States citizenship, and have been incorporated with those who were already American citizens in the same *body politic* according to Sec. 7 of said Act. Some of those who were already American citizens prior to the annexation of Porto Rico have been elected members of the Porto Rican House of Delegates by the native citizens, of Porto Rico, and in other cases as citizens of Porto Rico have cast their votes to elect natives of the Island as their representatives. I myself, a native citizen of Porto Rico, could not be entitled to represent, in a political capacity, the hundreds of citizens of the United States, born or naturalized in the mainland, who have given me their suffrages, if I were an alien. If I were an alien, I could not have attained the highest honor in my professional career, that of taking, as a member of the bar of this Honorable Court, the oath to maintain the Constitution of the United States, this oath being incompatible with allegiance to any other power than that prescribed by, and defined in, the Charter in which the sovereign people of the United States directly created this Court as well as the other Departments of our Government.

Believing, for all the above stated reasons, that Porto Rico has ceased to be a Province of Spain and has become a territory of the United States, and that the inhabitants thereof have ceased to be Spanish citizens and have become American citizens, it is respectfully submitted that the decision of the Circuit Court should be reversed.

Washington, D. C., *November*, 03.

FEDERICO DEGETAU,
Resident Commissioner from Porto Rico,
As Amicus Curiæ.